

ASSEMBLY BILL

No. 2676

Introduced by Assembly Member Bass

February 19, 2010

An act to amend Sections 6452.1, 6453, 6487.3, and 18510 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2676, as introduced, Bass. Sales and use taxes: use tax: income tax return.

The Sales and Use Tax Law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. Use tax is imposed on the purchaser, who is liable for the tax and must pay the tax to the State Board of Equalization, unless he or she has paid the use tax to a retailer registered to collect the use tax.

Existing law requires retailers, as specified, to register with, and to obtain a seller's permit or certification of registration-use tax from, the State Board of Equalization, and also requires specified businesses to register with the board and to annually report their use tax owed for the previous calendar year. For taxable years beginning on January 1, 2003, and ending on December 31, 2009, persons not otherwise registered with the board make an irrevocable election to report qualified use tax, as defined, on that person's income tax return. The Franchise Tax Board is required to revise the income tax returns to allow a person to report

and remit qualified use taxes to it and to remit the qualified use taxes collected to the board.

This bill would continue the authorization for an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, for taxable years ending after December 31, 2009, and would require the Franchise Tax Board to continue to allow a person to report and remit qualified use taxes to it and to remit the qualified use taxes collected to the board.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6452.1 of the Revenue and Taxation
2 Code is amended to read:

3 6452.1. (a) Notwithstanding Section 6451, every person that
4 purchases tangible personal property, the storage, use, or other
5 consumption of which is subject to qualified use tax, as defined
6 in subdivision ~~(b)~~ (d), that is otherwise required to report and remit
7 that tax pursuant to this part, may elect to report and remit qualified
8 use tax on an acceptable tax return.

9 (b) (1) A person that reports qualified use tax on an acceptable
10 tax return is deemed to have made the election authorized by this
11 section.

12 (2) (A) In the case of a married individual filing a separate
13 California personal income tax return, an election may be made
14 to report either one-half of the qualified use tax or the entire
15 qualified use tax on his or her separate California personal income
16 tax return.

17 (B) If an individual elects to report one-half of the qualified use
18 tax, that election will not be binding with respect to the remaining
19 one-half of the qualified use tax owed by that individual and that
20 individual's spouse.

21 (c) An election to report qualified use tax on an acceptable tax
22 return shall be irrevocable. An acceptable tax return that contains
23 use tax shall be considered a tax return for purposes of this part.

24 (d) For purposes of this section:

25 (1) "Acceptable tax return" means a timely filed original return
26 that is filed pursuant to Article 1 (commencing with Section
27 18501), Article 2 (commencing with Section 18601), Section

1 18633, Section 18633.5 of Chapter 2 (commencing with Section
2 18501) of Part 10.2, or Article 3 (commencing with Section 23771)
3 of Chapter 4 of Part 11.

4 (2) (A) Except as provided in subparagraph (B), “qualified use
5 tax” means the use tax imposed under this part, Section 35 of
6 Article XIII of the California Constitution, the Bradley-Burns
7 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
8 with Section 7200)), or *in accordance with* the Transactions and
9 Use Tax Law (Part 1.6 (commencing with Section 7251)) that has
10 not been paid to a retailer holding a seller’s permit or certificate
11 of registration-use tax.

12 (B) “Qualified use tax” does not include:

13 (i) Use tax that applies to a mobilehome or a commercial coach
14 that is required to be registered annually pursuant to the Health
15 and Safety Code or use tax that applies to a vehicle subject to
16 identification under Division 16.5 (commencing with Section
17 38000) of the Vehicle Code, or to a vehicle that qualifies under
18 the permanent trailer identification plate program pursuant to
19 subdivision (a) of Section 5014.1 of the Vehicle Code.

20 (ii) Use tax imposed on a vehicle, vessel, or aircraft.

21 (iii) Use tax imposed on a lessee of tangible personal property.

22 (e) If a person elects to report qualified use tax on an acceptable
23 tax return, that person shall comply with all of the following:

24 (1) The qualified use tax shall be reported on and remitted with
25 an acceptable tax return.

26 (2) The qualified use tax shall be reported on and remitted with
27 an acceptable tax return that is required to be filed for the taxable
28 year in which the liability for the qualified use tax was incurred.

29 (f) (1) The penalties and interest imposed under this part, the
30 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5
31 (commencing with Section 7200)), or the Transactions and Use
32 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply
33 to use tax reported as qualified use tax on an acceptable return.

34 (2) Any claims for refunds or credits of any use tax reported as
35 qualified use tax on an acceptable tax return shall be made in
36 accordance with Chapter 7 (commencing with Section 6901) of
37 this part.

38 (3) Qualified use tax shall be considered to be timely reported
39 and remitted for purposes of this part, the Bradley-Burns Uniform
40 Local Sales and Use Tax Law (Part 1.5 (commencing with Section

1 7200)), and the Transactions and Use Tax Law (Part 1.6
2 (commencing with Section 7251)), if the qualified use tax is timely
3 reported on and remitted with an acceptable tax return in
4 accordance with the provisions of this section.

5 (g) Notwithstanding a person's election to remit and to report
6 qualified use tax on an acceptable tax return, the State Board of
7 Equalization is not precluded from making any determinations for
8 understatements of qualified use tax against that person in
9 accordance with Part 5 (commencing with Section 6451).

10 (h) Any payments and credits shown on the return, together
11 with any other credits associated with that person's account, of a
12 person that elects to report qualified use tax on an acceptable tax
13 return shall be applied in the following order:

14 (1) Taxes imposed under Part 10 (commencing with Section
15 17001) or Part 11 (commencing with Section 23001), including
16 penalties and interest, if any, imposed under Part 10.2 (commencing
17 with Section ~~18041~~) 18401).

18 (2) Qualified use tax reported on the acceptable tax return in
19 accordance with this section.

20 (i) (1) This section does not apply to a person who is otherwise
21 required to hold a seller's permit or to register with the State Board
22 of Equalization pursuant to Part 1 (commencing with Section 6001)
23 of this division.

24 (2) This section applies to purchases of tangible personal
25 property made on or after January 1, 2003, in taxable years
26 beginning on or after January 1, 2003, ~~and on or before December~~
27 ~~31, 2009, and as of that date becomes inoperative, unless a later~~
28 ~~enacted statute extends the operation of this section.~~

29 ~~(3) Notwithstanding this section becoming inoperative as~~
30 ~~described in paragraph (2), any provisions in this section or Section~~
31 ~~18510 relating to collection activities attributable to qualified use~~
32 ~~taxes reported prior to the inoperative date of this section shall~~
33 ~~continue in the same manner as if this section were still operative.~~

34 SEC. 2. Section 6453 of the Revenue and Taxation Code is
35 amended to read:

36 6453. For purposes of the sales tax, the return shall show the
37 gross receipts of the seller during the preceding reporting period
38 and, in the case of a person who is liable for the sales tax and is
39 not a seller, the gross receipts of such person for the period in
40 which the liability was incurred. For purposes of the use tax, in

1 case of a return filed by a retailer, the return shall show the total
2 sales price of the property sold by him or her, the storage, use, or
3 consumption of which property became subject to the use tax
4 during the preceding reporting period; in case of a return filed by
5 a purchaser, *except as provided in Section 6452.1*, the return shall
6 show the total sales price of the property purchased by him or her,
7 the storage, use, or consumption of which became subject to the
8 use tax during the preceding reporting period.

9 The return shall also show the amount of the taxes for the period
10 covered by the return and any other information which the board
11 deems necessary for the proper administration of this part.

12 SEC. 3. Section 6487.3 of the Revenue and Taxation Code is
13 amended to read:

14 6487.3. (a) (1) For persons that elect to report qualified use
15 tax in accordance with Section 6452.1, except in the case of fraud,
16 intent to avoid this part or authorized rules and regulations issued
17 by the board, or the gross understatement of qualified use taxes,
18 every notice of a deficiency determination with respect to the
19 qualified use tax shall be mailed within three years after the last
20 day for which an acceptable tax return is due or filed, whichever
21 occurs later.

22 (2) In the case of a gross understatement of qualified use tax,
23 every notice of a deficiency determination with respect to the
24 qualified use tax shall be mailed within six years after the last day
25 for which an acceptable tax return is due or filed, whichever occurs
26 later.

27 (3) For purposes of this subdivision a “gross understatement of
28 qualified used tax” is a deficiency that is in excess of 25 percent
29 of the amount of qualified use tax reported on a person’s acceptable
30 tax return. In the case of married individuals filing separate
31 California personal income tax returns, the total amount of qualified
32 use tax reported will be considered in determining whether there
33 is a gross understatement of qualified use tax.

34 (4) For purposes of this section “acceptable tax return” means
35 a timely filed original return that is filed pursuant to Article 1
36 (commencing with Section 18501), Article 2 (commencing with
37 Section 18601), Section 18633, Section 18633.5 of Chapter 2
38 (commencing with Section 18501) of Part 10.2, or Article 3
39 (commencing with Section 23771) of Chapter 4 of Part 11.

(b) This section applies to reporting of purchases of tangible personal property made on or after January 1, 2003, in taxable years beginning on or after January 1, 2003, ~~and on or before December 31, 2009, and as of that latter date becomes inoperative, unless a later enacted statute extends the operation of this section.~~

SEC. 4. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11 in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years on and after January 1, 2003, ~~and ending on or before~~

- 1 ~~December 31, 2009, and as of that date becomes inoperative, unless~~
- 2 ~~a later enacted statute extends the operation of this section.~~

O